

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1032 of 1999

in

SPECIAL CIVIL APPLICATION No 5261 of 1999

with

CIVIL APPLICATION NO. 7589 OF 1999

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and

MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

BIPINKUMAR J DAVE

Versus

DIRECTOR OF MUNICIPALITIES

Appearance:

MR TR MISHRA for Appellants

Ms Katha Gajjar, Asstt. Govt. Pleader for Respondent No. 1, 4

MR PREMAL R JOSHI for Respondent No. 2 and 3

CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and

MR.JUSTICE D.P.BUCH

Date of decision: 16/12/1999

ORAL JUDGEMENT

Admitted. Ms Katha Gajjar, AGP appears and waives
service of notice of admission on behalf of respondent
Nos. 1 and 4. Mr. Joshi appears and waives service of

notice of admission on behalf of respondent Nos. 2 and 3.

This appeal is filed against dismissal of SCA No.5261 of 1999 by the learned Single Judge on July 21, 1999. It appears that a decision was taken by the Municipality to grant benefits of Fifth Pay Commission to its employees. It was the case of the Collector, Rajkot, respondent No.4 that before implementing the resolution, necessary formalities have not been gone into and hence, in exercise of powers under Section 258 of the Gujarat Municipalities Act, 1963 (hereinafter referred to as 'the Act'), hence, by an order, dated March 21, 1998, he suspended the order passed by the municipality. Notices were then issued and on August 4, 1998, action taken by the municipality was set aside. Both the order dated March 21, 1998 and the final order dated August 4, 1998 are on record. Looking to the final order, it is clear that it was passed after hearing the municipality. Being aggrieved by the said order, the petition was filed which was dismissed by the learned Single Judge.

Several contentions have been advanced by the learned counsel for the appellants. It is, however, not necessary to enter into larger question in view of the fact that on a short ground, LPA deserves to be allowed.

Mr. Mishra submitted that the resolution was passed by the municipality granting benefits to its employees and benefits were extended to the employees. In these circumstances, even if the Collector could have taken action, it was obligatory on him to issue notice and to extend an opportunity of hearing and only after complying with the principles of natural justice, such action could have been taken. For that, reliance was placed on the decision of a Division Bench of this Court in H.H.Parmar vs. Collector, Rajkot, (1979) XX (2) GLR 97. In that case, an order of appointment was issued by the municipality and a person was already appointed. The order was thus implemented. Thereafter, proceedings were taken by the Collector under Section 258 of the Act but without affording an opportunity to the person who was appointed. Setting aside the action, the Division Bench observed that when order of appointment had been issued and implemented, a right can be said to have been accrued in his favour. Whether such right was lawfully accrued to him or unlawfully accrued cannot be decided unless an opportunity of hearing was afforded to him. It was, therefore, incumbent on the part of the Collector before taking any action under Section 258 to issue notice to him and to afford a reasonable opportunity of

being heard before passing order. Since it was not done, the action was liable to be set aside and accordingly set aside.

In the instant case, contention of the appellants is that no notice was issued to the employees. Nothing is mentioned in the order passed by the Collector that such opportunity was afforded. In fact, looking to the order, it is clear that opportunity was afforded to the President as well as to the municipality and the order was passed.

No doubt, our attention was invited by Mr. Joshi appearing for respondents Nos. 2 and 3 that a decision of the Division Bench in H.H.Parmar was over-ruled by a Full Bench in P.G. Chavda vs. State, (1998) XXXIX (2) GLR 1048. Looking to the judgment, however, it is clear that it was over-ruled on interpretation of Section 258 as to whether after decision or order is implemented by the municipality, an action can be taken by the municipality under Section 258. So far as principles of natural justice and opportunity of hearing to the affected parties is concerned, the law laid down in H.H.Parmar by the Full Bench. The said decision, therefore, is of no assistance to the respondents.

For the foregoing reasons, LPA deserves to be allowed and is accordingly allowed. Order passed by the learned Single Judge as well as the final order passed by the Collector on August 4, 1998 are hereby quashed and set aside. Collector, respondent No.4, will again decide the matter after affording an opportunity of hearing to the persons affected. We may state that we are not expressing any opinion on merits of the matter and as and when the matter will be taken up by respondent No.4, it will be decided in accordance with law without being influenced in any manner, by the observations made by us hereinabove.

LPA is accordingly allowed. There shall be no order as to costs. No order on civil application.

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